UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

A.W. FARRELL & SON, INC.1

and

Case 28-CA-22599

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO-CLC, LOCAL UNION NO. 88

Pablo Godoy and David Kelly, Attys., for the General Counsel.

Steven W. Suflas and Isaac P. Hernandez, Attys. (Ballard Spahr, LLP), of Voorhees, New Jersey and Phoenix, Arizona, respectively, for the Respondent.

Richard G. McCracken, Atty. (McCracken, Stemerman & Holsberry), of Las Vegas, Nevada, for the Charging Party.

DECISION

I. Statement of the Case

LANA PARKE, Administrative Law Judge. Pursuant to charges filed by Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union No. 88 (Local 88), the Regional Director of Region 28 of the National Labor Relations Board (the Board) issued a Complaint and Notice of Hearing (the Complaint) on September 22, 2009.² The complaint alleges that A.W. Farrell & Son, Inc. (the Respondent) violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the Act). This matter was tried in Las Vegas, Nevada on April 8.

II. Issue

Did the Respondent violate Sections 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information relevant and necessary to the Union's enforcement of provisions of the pertinent collective-bargaining agreement?

III. Jurisdiction

At all material times the Respondent, a New York corporation with its main office in Dunkirk, New York, has had offices and places of business in various states of the United States, including a facility located in Las Vegas, Nevada (the Respondent's Las Vegas facility), has been engaged in business as a commercial roofing contractor. During the 12-month period

¹ Although the Respondent's name appears in several collective-bargaining agreements as A.W. Farrell's & Son, Inc., the evidence reveals the formal name of the Respondent is A.W. Farrell & Son, Inc.; variations of that name, although clearly designating the Respondent are not accurate. The accurate formal name is as stated in the caption.

² All dates herein are 2009 unless otherwise specified.

ending July 13, 2009, the Respondent, in conducting its business operations performed services valued in excess of \$50,000 in States other than the State of Nevada. I find that at all material times the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Sheet Metal Workers' International Association, AFL-CIO-CLC (SMWIA), and its affiliates, Local 88 and Local Union No. 112 (Local 112), have been labor organizations within the meaning of Section 2(5) of the Act.

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IV. Statement of Facts

On the entire record,³ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I find the following events occurred in the circumstances described below during the period relevant to these proceedings. Unless otherwise explained, findings of fact herein are based on party admissions, stipulations, and uncontroverted testimony.

A. Collective Bargaining Background

The Respondent and Local 112, which has its office in Jamestown, New York, have been parties to seriatim collective bargaining agreements for the past 30 to 40 years.⁴ Of the Respondent's agreements with Local 112, the one at issue herein was effective May 1, 2007 to April 30, 2010 and was entitled "Standard Form of Union Agreement" (the Local 112 Standard Form Agreement or Standard Form Agreement). The terms of the Standard Form Agreement were the product of negotiations between the SWMIA International and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA). The Local 112 Standard Form Agreement was negotiated by Local 112 and the Sheet Metal, Roofing, Ventilating and Air Conditioning Contracting Divisions of the Construction Industry and entered into by signatory business establishments individually, whether represented by a contractor association or not. Local 112 entered into the Standard Form Agreement as an affiliate of SMWIA, which was referred to within the Local 112 Standard Form Agreement as "the Union." Local 88 is also an affiliate of SMWIA. The Respondent is not and never has been signatory to any agreement with Local 88.

Article I of the Local 112 Standard Form Agreement sets forth the unit of employees covered by the terms of the agreement (Article I work or the Unit):

This Agreement covers the rates of pay and conditions of employment of all employees of [the signatory employer] engaged in but not limited to the: (a) manufacture,

³ The Respondent made an offer of proof as to the proposed testimony of William Farrell, President of the Respondent, which I rejected as not material to the issues herein. Pursuant to stipulation of the parties, the July 1, 2006—June 30, 2010 Standard Form of Union Agreement between Local 88 and SMACNA of Southern Nevada, Inc. is hereby received as General Counsel's Exhibit No. 16. The Order To Produce Written Offer Of Proof, dated June 29, 2010, the Respondent's Offer of Proof Regarding the Materiality of J. William Farrell's Testimony to the Disposition of this Case, dated August 5, 2010, and the Order Rejecting Offer of Proof, Closing Hearing, and Setting Date of Briefs are received as Administrative Law Judge Exhibits, Nos. 1, 2, and 3, respectively.

⁴ The Respondent has collective bargaining agreements with several other local union affiliates of SMWIA across the United States.

⁵ While the wording to the introductory paragraph of the Standard Form Agreement is not entirely clear, it is reasonable to infer that the designation "union" refers to the SMWIA as well as to Local 112.

fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all HVAC systems, air-veyor systems, exhaust systems, and air-handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches whether manually drawn or computer assisted used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; (e) metal roofing; and (f) all other work included in the jurisdiction claims of Sheet Metal Workers' International Association.

Article VIII, Sections 5 and 6 of the Local 112 Standard Form Agreement (the Two-Man Travel Rule) provides:

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Section 5. Except as provided in Sections 2 and 6 of this Article, the Employer agrees that journeymen sheet metal workers hired outside of the territorial jurisdiction of this Agreement shall receive the wage scale and working conditions of the local Agreement covering the territory in which such work is performed or supervised.

Section 6. When the Employer has any work specified in Article 1 of this Agreement to be performed outside the area covered by this Agreement and within the area covered by another agreement with another union affiliated with the Sheet Metal Worker's International Association, and qualified sheet metal workers are available in such area. the Employer may send no more than two (2) sheet metal workers per job into such area to perform any work which the Employer deems necessary, both of whom shall be from the Employer's home jurisdiction. All additional sheet metal workers shall come from the area in which the work is to be performed. Journeymen sheet metal workers covered by this Agreement who are sent outside of the area covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article but in no case less than the established wage scale of the local Agreement covering the territory in which such work is performed or supervised, plus all necessary transportation, travel time, board and expenses while employed in that area, and the Employer shall be otherwise governed by the established working conditions of the local Agreement. If employees are sent into the area where there is no local Agreement of the Sheet Metal Workers' International Association covering the area then the minimum conditions of the home local union shall apply.

The Respondent understood the Two-Man Travel Rule to mean that two employees of an employer signatory to the Agreement could travel to another local's jurisdiction to perform Article I work for their employer. Additional employees required for such work would have to be obtained through the auspices of the local union in whose jurisdiction the work was performed.

Article X of the Local 112 Standard Form Agreement provided a grievance procedure applicable to parties to the Agreement, which, in pertinent part, stated:

Section 1. Grievances of the Employer or [Local 112/SMWIA], arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized representative of [Local 112/SMWIA], if possible. Both parties may participate in conferences through representatives of their choice.

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Section 2. Grievances...may be appealed by either party to the Local Joint Adjustment Board where the work was performed or in the jurisdiction of the employer's home local.

Section 6. In the event of noncompliance with [the decision of a Local Joint Adjustment Board], a local party may endorse the award by any means including proceedings in a court of competent jurisdiction in accord with applicable state and federal law. If the party seeking to enforce the award prevails in litigation, such party shall be entitled to its costs and attorney's fees...

Local 88 has jurisdiction over Article I work performed in Las Vegas and Henderson, Nevada. The Respondent understood that if it performed Article I work in those areas the Two-Man Travel Rule applied, and it was required to hire through Local 88 all employees in classifications described in the Unit beyond the contractually permitted two.

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Local 88, as an affiliate of SMWIA, was signatory to a collective bargaining agreement entitled the Standard Form of Union Agreement and Addenda thereto with SMACNA of Southern Nevada, Inc. (the Local 88 Standard Form Agreement) for the relevant term of July 1, 2006 – June 30, 2010. Article I of the Local 88 Standard Form Agreement (the unit description) is identical to Article I of the Local 112 Standard Form Agreement. Article X of the Local 88 Standard Form Agreement provides for a grievance procedure like that of the Local 112 Standard Form Agreement, which may culminate in seriatim appeals to a Local Joint Adjustment Board and to the National Joint Adjustment Board.

B. Local 88's Grievance and Request for Information

Commencing about April 23, the Respondent performed work at the Henderson Aquatic and Recreation Center jobsite in Henderson, Nevada and at a jobsite at Carey Los Felis High School, both of which were within the jurisdiction of Local 88. Representatives of Local 88 visited the jobsites and observed work performed that they considered to be encompassed in Local 88's jurisdiction. The attendant workers appeared to utilize vehicles bearing the lettering: A.W. Farrell Roofing Local 162 as well as the website address www.roofusa.com. Thereafter, Local 88 representatives investigated the corporate and collective-bargaining circumstances of the Respondent and any related companies.⁶

By letter dated May 22, Local 88 filed a written grievance (the Grievance) with the Respondent alleging violations of the Local 88 Standard Form Agreement by the following conduct:

By not assigning work to our members covered by Article I Section 1 of [the Local 88 Standard Form Agreement], A W Farrell and Son Inc. and A W Farrell and Son Inc. DBA Progressive Services Inc. and also DBA RoofUSA NV L.L.C. have violated...provisions [specified thereafter] of our Collective Bargaining Agreement.

On June 3, when the Respondent and Local 88 were unable to settle the Grievance, Local 88 filed an appeal with the Local Joint Adjustment Board for the Sheet Metal Industry (LJAB).

⁶ It is unnecessary to relate the methodology or details of Local 88's investigation, as the Respondent has stipulated that if the General Counsel proves the Respondent had an obligation to provide the information Local 88 later sought, the Respondent would admit that Local 88 had a reasonable basis to request the information.

On June 4, Local 88 in writing requested certain information from the Respondent, stating (the June 4 Information Request):

Sheet Metal Workers Local Union No. 88 has reason to believe that alter ego relationships exist among A.W. Farrell & Son, Inc, Progressive Services, Inc. and Roof USA. The Local has reliable information that the metal roofing and siding work being performed at the Heritage Park Senior and Aquatic Facility in Henderson, Nevada is covered by the collective bargaining agreement between A.W. Farrell & Son and the Sheet Metal Workers. Consequently the Local needs the following information to verify or put to rest the nature of the relationship among A.W. Farrell & Son, Progressive Services, Inc. and Roof USA.

. . .

[Local 88] believes that this requested information is valid and relevant to the grievance filed May 22nd.

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The June 4 Information Request sought 40 separate items of information including details of the supervisorial, managerial, directorial, and ownership composition of each of A.W. Farrell & Son, Inc, Progressive Services, Inc. and Roof USA, their connections and interactions in the following areas: contractual obligations, day to day operations, inter-financial matters, inter-indebtedness, equipment ownership and usage, Nevada job bid and job performance, legal representation, advertising, employment. The June 4 Information Request also sought the details of employee benefit plans, details of membership in employer associations, inter-discussion of business matters, and copies of all documents referring to the formation, business direction and/or function of any of the three companies.

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By letter dated June 12, Steven W. Suflas (Mr. Suflas), counsel for the Respondent, on behalf of A. W. Farrell & Sons, Inc., Progressive Roofing, Inc. and Roof USA, LLC., informed Mr. Brooks, in pertinent part, as follows:

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First and foremost, neither A. W. Farrell & Sons, Inc., Progressive Roofing, Inc. nor Roof USA, LLC has ever been signatory to a collective bargaining agreement with [Local 88]. As a result, none of these companies is under any obligation to submit to the grievance and arbitration procedures set out in Article X of Local 88's collective-bargaining agreement with the SMACNA of Southern Nevada, Inc.

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Similarly, neither A. W. Farrell & Sons, Inc., Progressive Roofing, Inc. nor Roof USA, LLC is under any other contractual obligation that would bind any of them to the Local 88 collective-bargaining agreement.

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As a result, A. W. Farrell & Sons, Inc., Progressive Roofing, Inc. nor Roof USA, LLC are under no legal duty to submit to the grievance and arbitration provisions of the Local 88 contract.

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By letter dated June 19, Mr. Suflas informed Local 88 that the Respondent was under no legal obligation to provide Local 88 with the information requested in the June 4 Information Request. The Respondent did not, thereafter, provide Local 88 with any of the information sought.

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By letter to SMACNA dated June 22, Mr. Suflas requested a postponement of the pending LJAB hearing, noting, "By writing this letter, AW Farrell & Son is no way conceding that the LJAB has jurisdiction over any alleged dispute which it may have with Local 88, nor is it conceding that it owes any contractual obligations whatsoever to Local 88."

On September 23 and October 6, LJAB met to consider the Grievance and thereafter, on October 26, rendered a decision finding that the Respondent had violated various sections of the Agreement and assessing monetary damages. The Respondent appealed the LJAB decision.

V. DISCUSSION

Under Section 8(a)(5) and (8(d) of the Act, an employer must furnish a union with requested relevant information to enable it to represent employees effectively in administering and policing an existing collective-bargaining agreement. *NLRB v. Acme Industrial Co.*, 385 U.S. 4232, 435-436 (1967), *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989) enfd. *NLRB v. A-Plus Roofing, Inc.*, 39 F. 3d 1410 (9th Cir. 1994). The Respondent has stipulated that if the General Counsel proves the Respondent had an obligation to provide the information sought in the June 4 Information Request, the Respondent would admit that Local 88 had a reasonable basis to request the information, i.e., that the information was relevant.⁷ It follows that the pivotal issue herein is whether the Respondent had a bargaining obligation to furnish Local 88 with its requested information.

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The General Counsel presents two specific arguments as to why the Respondent's refusal to provide the information requested by Local 88 violates Section 8(a)(5): (1) the language of the Respondent's collective bargaining agreements grants non-signatory local unions 8(f) representational status whenever the Respondent does business within the jurisdiction of a non-signatory local union affiliate; (2) preclusion of non-signatory local unions from enforcing the extraterritorial clause runs counter to public policy. Although not specifically cited as an issue, Counsel for the General Counsel also argues that that a non-signatory local union has the right to request information from an employer doing business within its jurisdiction when the non-signatory local union is acting as an agent of the signatory local union.

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The General Counsel provides no authority for its proposition that simply by entering into a standard form agreement with Local 112, the Respondent agreed to 8(f) recognition of all local union affiliates in whose jurisdiction the Respondent might conduct unit work. It is true that the Local 112 Standard Form Agreement bound the Respondent to terms and conditions of non-signatory union bargaining agreements as to employees hired outside the territorial jurisdiction of the Local 112 Standard Form Agreement. That fact alone cannot justify an inference that the Respondent thereby intended to recognize each extra-territorial union in whose jurisdiction it did business, and there is nothing in the contractual language of the Local 112 Standard Form Agreement that shows recognitional intent toward any non-signatory union. I cannot agree, therefore, with the General Counsel's assertion that "Local 88 enjoys Section 8(f) representational status, attained by virtue of the [Local 112 Standard Form Agreement], including the extra-territoriality clause."

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⁷ In light of this stipulation, it is unnecessary to determine if the Information sought was presumptively relevant or if Local 88 had to demonstrate its relevance.

⁸ The Charging Party also argues that the Standard Form Agreement "creates what is in essence a national bargaining unit," giving local unions such as Local 88 the status of 8(f) representatives, entitled to request information about employers working in their respective jurisdictions.

⁹ That the Respondent could lawfully do so under Section 8(f) does not permit an inference that it did.

It is clear that the Local 112 Standard Form Agreement extended certain direct and indirect benefits to unit employees represented by local unions in visited areas that were affiliated with SMWIA--in this case, Local 88. Local 88 has jurisdiction over Article I work performed, inter alia, in Las Vegas and Henderson, Nevada. The language of the Two-Man Travel Rule is clear that when the Respondent performed Article I work in Local 88's jurisdiction, it was required to hire through Local 88 all employees beyond the contractually-permitted two. Local 88-represented unit employees are consequently third party beneficiaries of the Local 112 Standard Form Agreement's contractual provisions. However, third-party-beneficiary status does not confer statutory-bargaining standing on Local 88 so as to entitle Local 88 to the requested information in furtherance of a grievance against the Respondent for violation of the Two-Man Travel Rule. 10

The critical question is whether Local 88's status goes beyond that of a third-party beneficiary of the Local 112 Standard Form Agreement to include representational authorization from Local 112 and/or SMWIA sufficient to empower Local 88 to pursue grievances against the Respondent with the attendant rights thereto. No evidence was presented that Local 112 or SMWIA explicitly authorized Local 88 to pursue grievances under the Local 112 Standard Form Agreement. Any valid authorization must, therefore, be inferred from the terms of the Local 112 Standard Form Agreement.

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Article X of the Local 112 Standard Form Agreement provided a grievance procedure applicable to parties to the agreement, which, in pertinent part, stated:

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Section 1. Grievances of the Employer or [Local 112/SMWIA], arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized representative of [Local 112/SMWIA], if possible. Both parties may participate in conferences through representatives of their choice.

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Section 2. Grievances...may be appealed by either party to the Local Joint Adjustment Board where the work was performed or in the jurisdiction of the employer's home local...The local Employers' Association, on its own initiative, may submit grievances for determination...

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Section 6. In the event of noncompliance with [the decision of a Local Joint Adjustment Board], a local party may endorse the award by any means including proceedings in a court of competent jurisdiction in accord with applicable state and federal law. If the party seeking to enforce the award prevails in litigation, such party shall be entitled to its costs and attorney's fees...

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Section 1 under Article X permitted Local 112/SMWIA or its "duly authorized representative" to pursue a grievance initially. Nothing in Section 1 or 2 specifically designated any union other than Local 112/SMWIA to frame a grievance, but Section 2 provided that grievances unresolved at the first step could be appealed by either party (i.e. a signatory employer or Local 112/SMWIA's "duly authorized representative") to the LJAB in the area in which the work was performed. It is reasonable to infer that Section 2 contemplated, at the very least, the active involvement of a local affiliate of SMWIA in appealing a grievance to the joint adjustment board of its work locality, and that the term "party" in Section 2 included the local affiliate whose contractual interests in the Short Form Agreement had been arguably affected.

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¹⁰ See *Howell Insulation Company, Inc.*, 311 NLRB 1355 (1993), discussed below.

The language of Section 6 was more expansive than the preceding sections. Once a decision of a LJAB had been rendered, "a local party," which reasonably would include a local union affiliate of SMWIA, might seek to force compliance with the LJAB award. The authority to force compliance suggests a contractually sanctioned local-affiliate-interest in the grievance process as a whole, and the unambiguous overall import of Article X's grievance language is that any duly authorized representative of Local 112/SMWIA was authorized to initiate grievances under the Local 112 Standard Form Agreement. The question is whether Local 88 was a duly authorized representative of Local 112/SMWIA when it sought the information at issue.¹¹

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The Respondent contends that the Board's decision in Howell Insulation Company, Inc.. 311 NLRB 1355 (1993) is the controlling law regarding the disputed issue in this case and establishes that Local 88 was not and could not have been a statutory bargaining agent for the Respondent's employees during the relevant time period without the specific authorization of Local 112. In Howell an Alabama employer entered into a collective-bargaining agreement with an Alabama local affiliate of an international union. The agreement included an extra-territoriality clause, which provided that the employer would abide by other locals' area agreements when it undertook projects in their jurisdictions. When a non-union company closely associated with the employer took a job in Tennessee, the Tennessee local filed a grievance, claiming the nonunion company was substantially the same employer as the Alabama employer and bound by the extra-territoriality clause. The Board held that although the Tennessee local was a thirdparty beneficiary of the agreement, it was not statutorily empowered to file a grievance under the Alabama local's agreement. Following *Howell's* reasoning, if Local 88 is only a third-party beneficiary of the Agreement, it does not have standing to request information from the Respondent for the purpose of pursuing a grievance under the terms of the Local 112 Standard Form Agreement.

The Two-Man Travel Rule of the Local 112 Standard Form Agreement provides that when a signatory employer exceeds the two-man travel employee limitation in a visited locale and hires local workers, the employer shall be "governed by the established working conditions" of the applicable local collective-bargaining agreement as to those workers. The contractual provision at issue in *Howell* is remarkably similar to the Two-Man Travel Rule. Under the *Howell* collective bargaining agreement, the signatory employer agreed that "on all operations outside the chartered territory of the Union he will abide by the rates of pay, rules, and working conditions established by the collective-bargaining agreement between the local insulation contractors and the local Union in that jurisdiction." Instructed by the Board's view in *Howell*, it is clear that the language of the Two-Man Travel Rule did not confer statutory representational authority upon Local 88 for enforcement of the Local 112 Standard Form Agreement.

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The *Howell* decision is not, however, the only Board opinion relevant to these issues. In *Advanced Construction Services, Inc.*, 330 NLRB 365, enfd. 247 F. 3d 807 (8th Cir. 2001), the Board, in factual circumstances similar to the instant case, rejected the employer's contention that it had no duty to supply to information to a local union. The Board noted the employer was signatory to collective-bargaining agreements with an international union, of which the local union was an affiliate, that required the employer to adhere to the terms and conditions of employment established by 'bona fide local area agreements.' The Board found the international

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¹¹ The Respondent mistakenly asserts that the General Counsel must prove the Respondent and Local 112 intended that the Respondent be bound by the entire collective bargaining agreements of non-signatory local unions. The General Counsel need only show that the Local 112 Short Form Agreement authorized affected extra-territorial locals to pursue grievances relevant to their beneficiary rights under the Short Form Agreement.

agreements obligated the employer to supply the local union with requested information relevant and necessary to police its local area agreement. In enforcing the Board's decision in *Advanced*, the Eighth Circuit distinguished *Howell*, pointing out that the local union was more than a third-party beneficiary, as it had an obligation to maintain a hiring hall, which the employer could access, and was empowered to initially settle disputes or grievances arising under the terms of the agreement. 247 F. 3d 807, at 811. See also *Boden Store Fixtures, Inc.*, 342 NLRB 699 (2004) (agreement with national union, which obligated employer to comply with the terms of local agreements where it did business, including grievance procedure, constituted effective delegation of authority to local union to enforce the local agreement); *Jervis B. Webb Co.*, 302 NLRB 316 (1991) where a standard international agreement "incorporated by reference the terms and conditions of local union agreements when a signatory employer was performing work within the respective territorial jurisdictions of the local unions," the "contractual relationship between [the employer] and the [local union] was defined by both the Standard International Agreement and the applicable local union agreement." Supra, at 318.

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Viewing the terms of the Standard Short Form Agreement as a whole, I find that the agreement implicitly designated Local 88, a local affiliate of SMWIA, as an authorized representative of Local 112/SMWIA to insure compliance with those provisions relating to work performed in Local 88's jurisdiction. It logically follows that if Local 88 was empowered, as an authorized representative of Local 112/SMWIA, to pursue grievances about alleged breach of such provisions, it was also empowered to seek information relating to the grievances. Accordingly, the Respondent violated Sections 8(a)(5) and (1) of the Act by failing and refusing to furnish Local 88 with information relevant and necessary to the enforcement of the extraterritorial jurisdiction provisions of the Standard Form Agreement.¹²

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CONCLUSIONS OF LAW

- 1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union No. 88 is a labor organization within the meaning of Section 2(5) of the Act.
 - 3. The Respondent has violated Section 8(a)(5) and (1) of the Act as set forth herein.

THE REMEDY

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Having found that the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix." ¹³

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¹² In light of these findings, it is unnecessary to consider the General Counsel's public policy argument.

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, A.W. Farrell & Son, Inc., its officers, agents, successors, and assigns, shall

- 5 1. Cease and desist from:
 - (a) Failing and refusing to provide Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union No. 88 with the information requested in Local 88's June 4, 2009 written request for information.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
 - 2. Take the following affirmative action which is necessary to effectuate the purposes of the Act: (a) Within 21 days after receipt of this decision furnish Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union No. 88 with the information requested by it in its June 4, 2009 request for information.
 - (b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

 (c) Within 21 days after service by the Regional Office, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: November 18, 2010

Lana H. Parke

Administrative Law Judge

Ana V. Sarke

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14 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

WE WILL NOT refuse to give requested information to Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union No. 88.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

WE WILL promptly furnish the information requested on June 4, 2009 to the Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union No. 88.

		A.W. FARRELL & SON, INC.		
	_	(Employer)		
Dated	Ву			
		(Representative)	(Title)	

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1800 Phoenix, Arizona 85004-3099 Hours: 8:15 a.m. to 4:45 p.m.

602-640-2160.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.